

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JAMES LANGIN

PLAINTIFF

v.

No. 4:04CV324-P-A

ETHEL CARLIZE, ET AL.

DEFENDANTS

ORDER OF DISMISSAL

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff, a prisoner proceeding *pro se*, seeks review of his sentence imposed under the laws of Mississippi, specifically the effect of the state's decision to remove him from Earned Release Supervision for violation of the terms of that supervised release. The plaintiff had a hearing on the matter, and the tribunal found that he indeed violated the terms of his supervised release. As a result of the hearing, the plaintiff was reincarcerated, and the time he spent on Earned Release Supervision was found not to count toward his sentence. The plaintiff seeks to be placed back on Earned Release Supervision and to have the time previously spent on supervised release applied to his sentence, as well as money damages and other relief.

The plaintiff does not challenge the conditions of his confinement, as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his

claim under 42 U.S.C. § 1983 is not ripe for consideration and should be dismissed without prejudice to his ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.

SO ORDERED, this the 11th day of October, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE